

TITLE 6 - COURTS

CHAPTER 1 - COURTS AND PROCEDURES

ARTICLE 1 - TOHONO O'ODHAM JUDICIAL BRANCH

Section 1108 Right to Counsel; Indigent Criminal Defendants; Appointment of Attorney.

(A) Right to Counsel

(1) Any party ~~not subject to the provisions of subsection 1108(B)~~ in a proceeding before the Court shall have the right to assistance of counsel at his or her expense, provided that such counsel, whether a licensed attorney or lay advocate, must be authorized to practice in ~~accordance with any applicable law or court rule~~ the Judicial Court of the Tohono O'odham Nation.

(2) An indigent criminal defendant shall have the right to a state-licensed attorney at the Nation's expense in a criminal proceeding in which the Nation seeks to impose a total term of imprisonment of more than one year.

(B) Indigent ~~e~~Criminal ~~d~~Defendants

(1) A defendant in a criminal proceeding is indigent when the defendant certifies to the Court via a sworn financial affidavit indicating the defendant's income, other financial resources, and debts that the defendant is financially unable to retain private counsel and is requesting representation at the Nation's expense. The Court may set the request for a hearing to obtain more information, or find cause based upon the affidavit to appoint a state-licensed attorney consistent with this Section, subject to rules adopted by the chief judge consistent with these provisions. ~~An indigent defendant shall have the right to a state-licensed attorney at the expense of the Tohono O'odham Nation in a criminal proceeding in which a total term of imprisonment of more than one year is actually imposed.~~

(2) In a criminal proceeding where the Nation seeks to impose a total term of imprisonment of more than one year, the Nation shall give notice to the defendant and Court no later than the initial appearance that the Nation will seek such a term of imprisonment. If, in a criminal proceeding where the Nation seeks to impose a total term of imprisonment of one year or less, charges are added or amended which result in the Nation seeking to impose a total term of imprisonment of more than one year, the Nation will give the same notice no later than the initial appearance on the additional or amended charges.

(3) An indigent criminal defendant who is entitled to a court-appointed attorney may waive the right to counsel in writing after the Court has determined the waiver is made knowingly, intelligently, and voluntarily.

(C) Appointment of Attorney to Indigent Criminal Defendant

(1) Upon determination by the Court that the defendant is indigent, the defendant will be appointed a state-licensed attorney. The Court will assign the Advocate Program or another Nation's program designated to provide criminal defense services through a Court order.

(a) The assigned program will determine if there is a state-licensed attorney available in the program to represent the defendant. If that program is unable to represent the defendant, the assigned program will, within ten days of receiving the assignment, court order, and charging documents, file a notice of conflict.

(b) The assigned program will then determine, as soon as practicable, whether there is a state-licensed conflict attorney contracted by the Nation available to provide criminal defense services.

(c) If there is no conflict attorney available, the Court may set the matter for a hearing or address the issue at the pretrial hearing consistent with the rules adopted by the chief judge.

~~(2) The Court shall appoint a state-licensed attorney to represent an indigent defendant in a criminal proceeding in which a total term of imprisonment of more than one year is actually imposed; provided that an indigent defendant who is entitled to a court-appointed attorney may waive the right to counsel in writing after the Court has determined the waiver is made knowingly, intelligently and voluntarily. A criminal defendant is indigent when the defendant certifies that he or she is financially unable to retain private counsel via a sworn financial affidavit indicating the defendant's income and debts.~~

~~(3) The Court shall appoint attorneys to indigent criminal defendants in the following order: (a) Advocate Program or another Nation's program designated to provide criminal defense services; (b) conflict attorneys contracted by the Nation to provide criminal defense services; then (c) on a rotating basis, any attorney authorized to practice law in the Tohono O'odham Judicial Court and who is not employed by the Nation.~~

~~(C) At the initial appearance in a criminal proceeding, the Nation shall inform the Court whether the Nation will seek to impose at sentencing a total term of imprisonment of more than one year. If the Nation seeks to impose a total term of imprisonment of more than one year at any time after the initial appearance, the Nation shall notify the Court not later than 30 days before trial and the defendant shall have the right to state-licensed attorney in accordance with this section.~~